2009

Oak Lane Homeowners Association v. Dennis L. Griffin and Renae Griffin : Reply Brief

Utah Court of Appeals

IN THE UTAH SUPREME COURT

OAK LANE HOMEOWNERS ASSOCIATION, Petitioner, vs. DENNIS L. GRIFFIN and RENAE GRIFFIN, Respondents.	**REPLY BRIEF OF PETITIONER** Case No. 20090837 Court of Appeals Case No. 20080084-CA District Court Case No. 030405130

Appeal from the Utah Court of Appeals

SHAWN D. TURNER
SHAWN D. TURNER, L.C.
5383 South 900 East, Suite 104
Salt Lake City, Utah 84107
Telephone (801) 261-1461
Facsimile (801) 261-1470

Attorney for Respondents

STEPHEN QUESENBERRY (8073)
JESSICA GRIFFIN ANDERSON (11500)
HILL, JOHNSON & SCHMUTZ, L.C.
4844 North 300 West, Suite 300
Provo, Utah 84604
Telephone (801) 375-6600
Facsimile (801) 375-3865

Attorneys for Petitioner

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4844 North 300 West, Suite 300
Provo, Utah 84604
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Facsimile (801) 375-3865

Attorneys for Petitioner

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The Court of Appeals in *Oak Lane II* incorrectly interpreted Utah law in order to find that the Griffins had an easement over Oak Lane, a private road, by virtue of the Oak Hills Subdivision plat. This type of easement has not been previously recognized in Utah with respect to private roads. And, in fact, the adoption of such an easement would contradict the rule set forth in a long line of Utah cases. Because Utah law establishes a clear rule with respect to easements by plat, reliance on the holdings of other jurisdictions is unnecessary.

I. THE *OAK LANE II* COURT INCORRECTLY INTERPRETED UTAH LAW AND ERRONEOUSLY ALLOWED A PRIVATE EASEMENT TO ARISE IN THE ABSENCE OF A PUBLIC EASEMENT.

The *Oak Lane II* court misconstrued *Tuttle* and other Utah cases to create a private easement by plat that is unsupported by Utah law. The Utah case law that exists on easements created by plat clearly supports the Association's position that the Griffins do not have a private easement over the private lane known as Oak Lane. The Griffins' brief alleges that the Association makes a new argument on appeal, namely that Oak Lane was somehow abandoned. To clarify, the Association makes no such argument. Oak Lane was never a public road (R. 532) and therefore could not have been abandoned as a public road. The Association simply requests that this Court correct the Oak Lane II decision and apply Utah law to the facts of this case.

The clear rule in Utah is that when a public easement arises by virtue of a plat in favor of the current abutting landowners, a private easement then arises in favor of those

same landowners. However, a private easement cannot arise via plat without a public easement. *See, e.g.*, *Evans v. Board of County Commissioners*, 2004 UT App 256, ¶ 24, 97 P.3d 1112; *Carrier, v. Lindquist*, 2001 UT 105, ¶ 12, 37 P.3d 1112; *Mason v. State of Utah*, 656 P.2d 465, 468 (Utah 1982); *Tuttle v Sowadski*, 126 P. 959, 962 (Utah 1912). The fundamental difference between the existing case law and the facts of this case is that, in each of the cases, the easement at issue was on a road that was, at some point, a public road. The *Oak Lane II* court failed to make this distinction and failed to correctly apply the existing case law to the facts of this case.

Contrary to existing Utah law, *Oak Lane II* created a new private easement by plat, without the prior existence of a public easement. In making this new law, the court correctly cited *Tuttle v Sowadzki* for the rule stated above, that when a public easement is created by a plat, a private easement also arises in favor of abutting landowners. 126 P. 959, 962 (Utah 1912). However, *Oak Lane II* failed to correctly consider the ultimate holding of *Tuttle*. The *Tuttle* court applied the above rule and held that a private easement in a non-existent public highway could not arise for a landowner that obtained his lot after the public road had been abandoned:

> There being no public highways or easement in existence when [the Tuttles] obtained their lots, no such easement could pass to them as appurtenant to the lots, nor could a private easement be created in a public highway because no such highway was in existence.

Id at 963. Thus, under Utah law, a private easement does not arise over a road unless the road is public at the time the abutting landowner acquired the property.

In the facts of this case, no private easement over Oak Lane could arise

because Oak Lane was never a public road. (R. 532). Abandonment, therefore, is not an issue in this case. There is no question that, at the time the Griffins obtained their lot, Oak Lane was not a public road, nor has it become so in the time since. In fact, the Oak Hills Subdivision plat clearly reflects the intention of the original grantors of preventing a public dedication, instead retaining the use of Oak Lane as a private lane. *Id.* The *Oak Lane II* court completely ignored this critical fact and incorrectly applied Utah law when it affirmed the trial court's holding that the Griffins have a private easement over Oak Lane.

Utah case law since *Tuttle* has repeatedly reaffirmed the rule that, in order for a private easement to arise by plat, the road must have been public at some point during the ownership of the landowner claiming the easement.[1]

In *Mason v. State of Utah*, the court reaffirmed the rule that a private easement arises and survives abandonment where the road was public during the current landowner's ownership. 656 P.2d 465, 468 (Utah 1982). The Mason court held that, where the public road came into existence after the abutting landowner obtained his land, a private easement arose at the same time the public easement arose and that the private easement could then survive the abandonment of the public road. *Id.*

Likewise, *Carrier v. Lindquist*, confirms this rule. The *Carrier* court found that "[b]ecause the alley had not been legally vacated at the time of plaintiffs' purchase, the trial court was correct in finding that plaintiffs' reliance on the plat map entitles them to

[1] Each of the following cases is analyzed in detail in the Association's opening brief.

private easements over the alley abutting their properties as depicted on the plat map." 2001 UT 105, ¶ 15, 37 P.3d 1112. Again. the reasoning depends on the existence of a public easement. Because the public easement was in place when the landowners obtained their property, their private easement could survive the abandonment of the public alley.

Finally, *Evans v. Board of County Commissioners*, a 2004 case, again confirms the rule. 2004 UT App 256, ¶ 24, 97 P.3d 1112. The *Evans* court acknowledged "the longstanding doctrine that a private easement over platted streets arises upon the purchase of property with reference to the plat map, so long as the [public] roads have not been legally vacated prior to the purchase." *Id*

To reiterate the point, under Utah law. a private easement cannot arise by plat unless there was a public easement at some point during the abutting landowner's ownership.[2] Unfortunately. the Griffins do not meet the requirements of this rule. It is an

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[2] The Griffins acknowledge that they did not assert an easement by necessity, implication, or prescriptive, but argue that their alleged easement over Oak Lane could be deemed an express easement, simply because a plat exists that shows their property abutting the private lane. However, as discussed above, Utah law clearly prohibits the existence of a private easement by plat without a simultaneous public easement. And the Griffins do not otherwise meet the requirements of an express easement. An express easement is "expressly created between two parties in a land transaction or conveyance by an express grant or an express reservation." *Potter v Chadaz*, 1999 UT App 95, ¶ 9, 977 P.2d 533. In determining whether an express easement exists, Utah courts look to the "'intent of the parties to an agreement purportedly transferring real property . . . . Words that clearly show intention to grant an easement are sufficient. provided the language is certain and definite in its term.'" *Id* (citations omitted). Additionally, creation of an express easement requires the mutual assent of the parties, as well as consideration. *Id.* In this case, the plat does not "clearly show intention to grant an easement" sufficient to create an express easement in favor of the Griffins, nor is there any alleged mutual asset or

undisputed fact that Oak Lane has never been a public road. (R. 532). Thus, a private easement could never have arisen by virtue of the plat in favor of the Griffins or any other abutting landowner. The Court of Appeals erred in applying Utah law to the facts of this case.

II. THE GRIFFINS' RELIANCE ON THE CASE LAW OF OTHER JURISDICTIONS IS MISPLACED WHERE UTAH LAW SETS FORTH A CLEAR RULE.

In support of their claim to a private easement over Oak Lane, the Griffins, like the *Oak Lane II* court, misinterpret Utah case law and then place a great deal of weight on case law from South Carolina, North Carolina, New Hampshire, Michigan, Tennessee, and Illinois.[3] Even taken as supportive of the Griffins' claim, these six eastern states cannot be said to constitute "universal support." Further, this case law is simply quoted in chunks and not analyzed in the context of the facts of each case, which makes it difficult to ascertain their relative value.

While case law from other jurisdictions may be used to buttress Utah courts' reasoning, those decisions are largely irrelevant where Utah law has a clearly established rule with respect to easements by plat. Utah courts may view law from other jurisdictions as persuasive but must resolve cases "under the substantive law of Utah." *Atkinson v. Stateline Hotel Casino & Resort*, 2001 UT App 63, ¶ 16, 21 P.3d 667; *see also Cabaness*

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consideration. In addition, the *Evans* case suggests that a private easement by plat might have statute of frauds problems. *See Evans*, 2004 UT App 256 at ¶ 9.

[3] The Griffins' brief rests almost entirely on "learned treatises" and law in other jurisdictions. The Association has already refuted the *Oak Lane II* court's use of the treatises in its opening brief.

v. Thomas, 2010 UT 23, ¶ 37, 654 Utah Adv. Rep. 28. In a clear line of cases, Utah courts have established the rule that only those "landowners whose property abuts public streets, alleys, and public ways that appear on a plat map are entitled to a private easement over those public ways." *Carrier, v. Lindquist*, 2001 UT 105, ¶ 12, 37 P.3d 1112; *see also Evans v. Board of County Commissioners*, 2004 UT App 256, ¶ 24, 97 P.3d 1112; *Mason v. State of Utah*, 656 P.2d 465, 468 (Utah 1982); *Tuttle v. Sowadski*, 126 P. 959, 962 (Utah 1912). This is the rule that must be applied to the facts of this case. The *Oak Lane II* court failed to apply the correct law to this case, and the Association therefore requests that its decision be reversed.

CONCLUSION

Therefore, in light of the foregoing, this Court should reverse the Court of Appeals' decision in *Oak Lane II*, in as much as it inappropriately creates a new automatic private easement by plat unsupported by Utah law, and remand this case for further consideration in light of the correct law.

RESPECTFULLY SUBMITTED this 21st day of May 2010.

HILL, JOHNSON & SCHMUTZ, LC

Stephen Quesenberry
Jessica Griffin Anderson
Attorneys for Petitioner

PROOF OF SERVICE

I hereby certify that, on the 21st day of May 2010, two true and correct copies of the foregoing **BRIEF OF PETITIONER** were mailed, postage prepaid, to the following:

SHAWN D. TURNER
SHAWN D. TURNER, L.C.
5383 South 900 East, Suite 104
Salt Lake City, Utah 84107